

Suzanne Henderson

PGS 10 \$52.00

Submitter: SIMPLIFILE

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**OIL AND GAS LEASE**

**(NO SURFACE OPERATIONS)  
(Paid-Up Lease)**

**THE STATE OF TEXAS****COUNTY OF TARRANT**

This Oil and Gas Lease, (hereafter called "Lease"), is made on the 10th day of March 2010, between **Attebury Grain, LLC, a Texas limited liability company**, (hereafter called "Lessor"), whose address is 3905 Bell Street, Suite B, Amarillo, Texas 79109, and **XTO Energy Inc., a Delaware Corporation**, (hereafter called "Lessee"), whose address is 810 Houston Street, Fort Worth, Texas, 76102.

1. **Grant.** In consideration of \$10.00 in hand paid and other good and valuable consideration, Lessor grants and leases exclusively unto Lessee the land described on attached **Exhibit A** (the "Land") for the purpose of exploring, drilling and producing oil, gas and other products manufactured from oil and gas produced therefrom in Tarrant County, Texas.

This Lease also covers and includes all land owned or claimed by Lessor adjacent or contiguous to the Land, whether the same be in said survey or surveys or in adjacent surveys, although not included within the boundaries of the land particularly described above. If any additional acreage is included in this Lease pursuant to the foregoing sentence, then bonus shall be calculated and paid as to said additional acreage on the same terms as it is calculated and paid for the land specifically described above.

2. **Primary Term.** Subject to the other provisions herein contained, this Lease is for a term of **four (4) years** from this date (called "Primary Term") and for so long thereafter as oil or gas is produced from the Land, or lands or leases pooled therewith, in paying quantities.

3. **Minerals Covered.** Notwithstanding any other provision hereof, this Lease covers only oil and gas. The term "oil and gas" means oil, gas, and other liquid and gaseous hydrocarbons and their constituent elements produced through a well bore.

4. **Royalty.**

(a) As royalties, Lessee agrees:

(1) To deliver free of cost to Lessor at the well(s) or to the credit of Lessor at the pipeline to which the well(s) may be connected, twenty five percent (25%) (the "Royalty Percentage") of all oil and other liquid hydrocarbons produced and saved from the Land. At Lessor's option, which may be exercised from time to time and, which initially shall be assumed as exercised by Lessor unless Lessor notifies Lessee in writing otherwise, Lessee shall pay to Lessor the same part of the market value at the well of oil and other liquid hydrocarbons of like grade and gravity prevailing on the day the oil and other hydrocarbons are sold from the Lease in the general area in which the Land is located.

(2) To pay to Lessor:

(i) On gas produced from the Land and sold by Lessee or used off the Land and to which the following subparagraphs (ii) and (iii) do not apply, the Royalty Percentage of the market value at the well, subject to the other provisions herein.

(ii) On gas produced from the Land that is processed in a processing plant in which Lessee or an affiliate of Lessee has a direct or indirect interest, the higher of the Royalty Percentage of the market value of the gas at the inlet to the processing plant, or the Royalty Percentage of the market value of all processed liquids saved from the gas at the plant plus the Royalty Percentage of the market value of all residue gas at the outlet of the plant.

(iii) On gas produced from the Land that is processed in facilities other than a processing plant in which Lessee or an affiliate of Lessee has a direct or indirect interest, the Royalty Percentage of the market value at the plant of all processed liquids credited to the account of Lessee and attributable to the gas plus the Royalty Percentage of the market value of all residue gas at the outlet of the plant.

(b) The market value of gas will be determined at the specified location by reference to the gross heating value (measured in British thermal units) and quality of the gas. The market value used in the calculation of oil and gas royalty will never be less than the total proceeds received by Lessee in connection with the sale, use, or other disposition the oil or gas produced or sold. For purposes of this paragraph, if Lessee receives from a purchaser of oil or gas any reimbursement for all or any part of severance or production taxes, or if Lessee realizes proceeds of production after deduction for any expense of production, gathering, dehydration, separation, compression, transportation, treatment, processing, storage, or marketing, then the reimbursement or the deductions will be added to the total proceeds received by Lessee, except as set forth in (c) below.

(c) Lessor's royalty shall be calculated free and clear of costs and expenses for exploration, drilling, development and production, including, but not limited to, dehydration, storage, compression, separation by mechanical means and product stabilization, incurred prior to the oil, gas and other mineral production leaving the leased premises or prior to delivery into a pipeline or gathering system, whichever occurs first; provided, however, (a) Lessee shall have free use of produced oil and gas for operations conducted on the leased premises or lands pooled therewith, and the royalties on oil and gas herein provided shall be computed after deducting any so used, and (b) Lessor's royalty shall bear its proportionate share of all ad valorem taxes and

production, severance and other taxes and the actual, reasonable costs (including compression and related fuel charges) paid to or deducted by a third party to transport, compress, stabilize, process or treat the oil, gas and other mineral production off the leased premises in order to make the oil, gas and other mineral production saleable, increase its value or in order to get the oil, gas and other mineral production to a market.

(d) Lessor shall be paid the Royalty Percentage of all payments and other benefits made under any oil or gas sales contract or other arrangement, including take-or-pay payments and payments received in settlement of disputes; provided that if Lessor receives a take-or-pay payment or similar payment for gas that has not been produced, and if the gas purchaser "makes-up" such gas and Lessee is required to give such purchaser a credit for gas previously paid for but not taken, then Lessor will only receive its Royalty Percentage of any payments made by the gas purchaser for such make-up gas taken pursuant to the take-or-pay provision or similar provision.

(e) If gas produced from the Land is sold by Lessee pursuant to an arms-length contract with a purchaser that is not an affiliate of Lessee, and for a term no longer than that which is usual and customary in the industry at the time the contract is made, then the market value of the gas sold pursuant to the contract shall be the total proceeds received by Lessee in the sale, subject to the provisions of paragraphs 4(b) and (c) above.

(f) As used in this Lease, "affiliate" means (i) a corporation, joint venture, partnership, or other entity that owns more than fifty percent of the outstanding voting interest of Lessee or in which Lessee owns more than fifty percent of the outstanding voting interest; or (ii) a corporation, joint venture, partnership, or other entity in which, together with Lessee, more than fifty percent of the outstanding voting interests of both Lessee and the other corporation, joint venture, partnership, or other entity is owned or controlled by the same persons or group of persons.

(g) Unless there is a reasonable title dispute or question as to title, Lessee must disburse or cause to be disbursed to Lessor its royalty on production from a particular well not later than one hundred twenty (120) days after the end of the month of first sales of production. Thereafter, Lessee must disburse or cause to be disbursed to Lessor its royalty on production by the last day of the second month after the month in which production is sold. If not paid when due, Lessor's royalty will bear interest at the statutory rate from due date until paid, which amount Lessee agrees to pay.

(h) Acceptance by Lessor of royalties that are past due will not act as a waiver or estoppel of its right to receive interest due thereon unless Lessor expressly so provides in writing signed by Lessor. The royalty payment obligations under this Lease shall not be affected by any division order or the provisions of Section 91.402 of the Texas Natural Resources Code or any similar statute.

(i) The receipt by Lessee from a purchaser or a pipeline company of proceeds of production for distribution to Lessor will not result in Lessee acquiring legal or equitable title to Lessor's share of those proceeds, but Lessee will at all time hold Lessor's share of those

proceeds for the benefit of Lessor. Notwithstanding the insolvency, bankruptcy, or other business failure of a purchaser of production from the Land or pipeline company transporting production from the Land, Lessee will remain liable for payment to Lessor for, and agrees to pay Lessor all royalties due Lessor together with interest if not timely paid.

**5. Shut-in Royalty.** After the Primary Term, if there is a gas well on this Lease that is capable of producing in paying quantities, but gas is not being sold for a period of sixty (60) consecutive days, and this Lease is not otherwise being maintained, Lessee shall pay or tender an annual shut-in royalty of \$50.00 for each well from which gas is not being sold for such period. Payment with respect to such well will be due within ninety (90) days after the later of (i) the date the well is shut-in, or (ii) the date this Lease is not otherwise being maintained. Thereafter, while such well remains shut-in, Lessee shall make shut-in payments in the same amount at annual intervals on or before the anniversary of the date the first payment is due. While any such well is shut-in, this Lease shall be considered as producing in paying quantities for all purposes of this Lease. At the option of Lessee, which may be exercised by Lessee giving notice to Lessor, a well which has been drilled and Lessee intends to frac shall be deemed a well capable of producing in paying quantities and the date such the well is shut-in shall be when the drilling operations are completed. It is expressly agreed and understood that Lessee shall have no right to maintain this lease in force after the expiration of the primary term hereof by payment of shut-in gas royalty for any period exceeding twenty-four (24) consecutive months. The payment or tender of royalty under this paragraph may be made by the check of Lessee mailed or delivered to the parties entitled thereto on or before the due date.

## **6. Operations Clause.**

(a) If, at the expiration of the Primary Term, oil or gas is not being produced from the Land, but Lessee has commenced operations for the drilling of a well on the Land or land pooled therewith, the Lease will not terminate but will remain in effect for so long thereafter as operations are carried out with no cessation of more than ninety consecutive (90) days, and if the operations result in the production of oil or gas, the Lease shall remain in force as otherwise provided herein. For the purposes of this Lease, the term "operations" means operations for any of the following: drilling, testing, completing, fracing, reworking, recompleting, deepening, plugging back, or repairing of a well in search of or in the endeavor to obtain, maintain, re-establish or enhance production of oil or gas with no cessation of more than ninety consecutive (90) days.

(b) If, at the expiration of the Primary Term, Lessee is engaged in operations as defined above or shall have completed a well (as a dry hole or a well capable of producing) on Land or land pooled therewith within one hundred twenty (120) days prior to the end of the Primary Term, this Lease will remain in force as to all acreage and depths as long as there is no lapse of more than one hundred eighty (180) days between the completion of one well and the commencement of the actual drilling of another well. The commencement of actual drilling means the penetration of the surface with a drilling rig capable of drilling to the anticipated total depth of the well. After a well is commenced, drilling operations must continue with diligence and in a good and workmanlike manner in a good faith effort to reach the anticipated total depth with no cessation of operations for more than ninety (90) consecutive days. A well will be

deemed to have been completed on the date of the release of the drilling rig from the drill site, if the well is a dry hole, or on the date of completing the official Railroad Commission of Texas potential test, if the well is completed as a well capable of producing oil or gas. The permitted time between wells shall be cumulative so that if a well is commenced prior to the date it is required to be commenced, the number of days prior to the date on which the well should have been commenced shall be added to the time permitted for the next well.

**7. Pooling.** Lessee shall have the continuing and recurring right to pool the Land with other lands or leases in the vicinity to form a pooled unit for the production of oil and gas or either of them. Pooled units for gas shall contain no more than six hundred and forty (640) acres, plus 10% tolerance; and pooled units for oil shall contain no more than forty (40) acres, plus 10% tolerance. Lessee shall file for record, in the Real Property Records where the Land is located, an instrument describing and designating the pooled acreage and leases and depth limitations, if any, for the pooled unit, and upon recordation, the unit shall become effective as to all parties hereto. Lessee may at its election exercise its pooling option before or after commencing operations on the pooled unit. In the event of operations on or production of oil or gas from any part of a pooled unit which includes the Land covered by this Lease, except for the payment of royalties, the operations or production shall be considered as operations on or production of oil or gas from the Land covered by this Lease, whether or not the well is located on the land covered by this Lease. In the event Lessee should exercise its option to pool or unitize any portion of the Land with other lands or leases as herein provided, this Lease shall continue in force and effect after the Primary Term in accordance with the terms of this Lease as to that portion of the Land actually included in a pooled unit and said Lease shall terminate by its terms as to such other portions of the Land not included in such pooled unit, unless otherwise maintained under the terms and provisions of this Lease. There shall be allocated to the Land included in the unit that prorated portion of the oil and gas, or either of them, produced from the pooled unit which the total number of net acres of the Land covered by this Lease and included in the unit bears to the total number of surface acres included in the unit. Royalties shall be computed on the portion of production sold by Lessee and allocated to the Land covered by this Lease and included in the unit just as though the production was from the Land. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder. Any unit formed may be amended or revised by Lessee by the addition of other leases and/or the expansion or contraction or both, before or after commencement of production, provided such revised unit complies with the provisions of this Lease, and to the extent any portion of the Land included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall be adjusted accordingly effective as of the effective date of the written declaration of revision filed of record by Lessee. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this Lease but Lessee shall nevertheless have the right to pool as provided above with consequent allocation of production as above provided. As used in this paragraph, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

**8. No Surface Operations.** It is hereby agreed and understood that there shall be no

drilling activities on the surface of the leased premises. Notwithstanding the foregoing, this waiver of surface shall not be construed as a waiver of the rights of Lessee to utilize the subsurface of the leased premises under this lease, and Lessee shall have the right to exploit, explore for, develop and produce oil, gas and other covered minerals under this lease from wells from surface locations off the leased premises, including, but not limited to, directional or horizontal drilling activity which comes under the surface of the leased premises. This drilling surface waiver does not apply to any surface rights associated with instruments other than this lease.

9. **Assignments.** Lessor is granting rights to Lessee that Lessor would not grant to others. Therefore, prior written approval of Lessor is required for any transfer or assignment of this Lease by Lessee; provided that, without the consent of Lessor, Lessee may (i) transfer or assign this Lease as long as such transfer or assignment does not result in Lessee owning less than an undivided 20% interest in this Lease, or (ii) in the case of a corporate merger, consolidation or reorganization, or (iii) in the case of a sale of all or substantially all of the assets of Lessee or a widespread sale of assets of Lessee which includes Lessee's interest in this Lease. When Lessor's consent is required, Lessor's prior written approval shall not be unreasonably withheld. No change or division in ownership of the land, rentals or royalties however accomplished shall operate to enlarge the obligations or diminish the rights of Lessee; and no such change in ownership shall be binding on Lessee nor impair the effectiveness of any payments made hereunder until Lessee shall have been furnished, thirty (30) days before payment is due, a certified copy of the recorded instrument evidencing any transfer, inheritance, sale or other change in ownership.

10. **Force Majeure.** Should Lessee be prevented by reason of Force Majeure from complying with any express or implied covenant of this lease (other than a requirement to pay money), from conducting drilling or reworking operations on the leased premises or on lands pooled therewith, or from producing oil or gas, then while so prevented, that covenant will be suspended; Lessee will not be liable for damages for failure to comply therewith; this lease will be extended so long as Lessee is prevented from conducting drilling or reworking operations on or from producing oil or gas from the leased premises or lands pooled therewith; and the time while Lessee is so prevented will not be counted against Lessee. "Force Majeure" means any Act of God; any federal or state law; any rule or regulation of governmental authority; scarcity or delay in obtaining materials, equipment, or labor; delays in obtaining permits; or other causes beyond the control of Lessee (other than financial reasons). Force Majeure shall extend this lease for a reasonable period of time beyond the end of the actual Force Majeure, in order for Lessee to prepare for and to proceed with conducting the desired operations on or from producing oil or gas from the leased premises.

11. **Warranty and Proportionate Reduction.** Lessor warrants and agrees to defend the title to said Land against the claims of all persons whomsoever. If Lessor owns an interest in the Land less than the entire fee simple estate, then the royalties (including shut-in royalties) payable hereunder will be reduced proportionately. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. Lessee, at its option, may discharge any tax, mortgage, or other lien or interest and other charges on the Land, and in the event Lessee does so, Lessee will have the option of applying the royalties accruing to

Lessor toward payment of same and Lessee shall be subrogated to the rights of the holder thereof.

12. **Curing Defaults.** Should Lessee at any time fail to comply with its obligations hereunder regarding construction, maintenance, or repair within forty-five (45) days after receipt of written notice from Lessor, Lessor shall have the right to do or have done whatever is necessary to fulfill the obligations to its satisfaction, and Lessee shall be liable to Lessor for the reasonable and necessary expenses thus incurred by Lessor, to be paid within thirty (30) days after Lessor shall have furnished Lessee an itemized written statement of the expenses.

13. **Notices.** All notices shall be deemed given and reports shall be deemed delivered if sent by certified letter, properly addressed and deposited in the United States mail, postage prepaid, to Lessor and Lessee at the addresses shown above, or if by courier or by Federal Express next business day delivery, upon receipt.

**14. Indemnity and Insurance.**

(a) LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR, AND LESSOR'S REPRESENTATIVES, SUCCESSORS, AND ASSIGNS AGAINST ALL EXPENSES, CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION OF ANY NATURE FOR INJURY TO OR DEATH OF PERSONS AND LOSS OR DAMAGE TO PROPERTY, INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES, EXPERT FEES, AND COURT COSTS, CAUSED BY LESSEE'S OPERATIONS ON THE LAND OR LESSEE'S MARKETING OF PRODUCTION FROM THE LAND OR ANY VIOLATION OF ANY ENVIRONMENTAL REQUIREMENTS BY LESSEE. AS USED IN THIS PARAGRAPH, THE TERM "LESSEE" INCLUDES LESSEE, ITS AGENTS, EMPLOYEES, SERVANTS, CONTRACTORS, AND ANY OTHER PERSON ACTING UNDER ITS DIRECTION AND CONTROL, AND ITS INDEPENDENT CONTRACTORS. LESSEE'S INDEMNITY OBLIGATIONS SURVIVE THE TERMINATION OF THIS LEASE.

(b) At all times while this Lease is in force, Lessee shall acquire and maintain insurance covering all of its operations on the Land, including any work performed on its behalf by contractors, subcontractors, and others. The policies shall include coverage for comprehensive general liability, for bodily injury and property damage, blowout and loss of well coverage, and coverage for any damage to the environment, including coverage for the cost of clean up and surface remediation. The coverage shall be in the minimum amount of \$3,000,000. If Lessee conducts actual physical operations on the Land, upon request, Lessee shall furnish a certificate from the issuing insurance company or companies evidencing the coverage.

15. **Dispute Resolution.** In the event of a dispute under this Lease, the parties agree to attempt to resolve the dispute through good faith mediation to be held in Tarrant County, Texas.

16. **Offsite Operations.** As a result of land development in the vicinity of the lease premises, governmental rules or ordinances regarding well sites, and/or surface restrictions as may be set forth in this lease and/or other leases in the vicinity, surface locations for well sites in

the vicinity may be limited and Lessee may encounter difficulty securing surface location(s) for drilling, reworking or other operations. Therefore, since drilling, reworking or other operations are either restricted or not allowed on the lease premises or other leases in the vicinity, it is agreed that any such operations conducted at a surface location off of the lease premises or off of lands with which the lease premises are pooled in accordance with this lease, provided that such operations are associated with a directional well for the purpose of drilling, reworking, producing or other operations under the lease premises or lands pooled therewith, shall for purposes of this lease be deemed operations conducted on the lease premises. Nothing contained in this paragraph is intended to modify any surface restrictions or pooling provisions or restrictions contained in this lease, except as expressly stated.

**17. Miscellaneous Provisions.**

(a) In the event this Lease expires for any reason as to all or any part of the Land, Lessee shall promptly furnish Lessor with a written, recordable release covering all of the Land or that portion of the Land to be released.

(b) Nothing in this Lease negates the usual implied covenants imposed upon Lessee under applicable law.

(c) Lessee will conduct all operations hereunder in compliance with the rules of the Railroad Commission of Texas and federal and state environmental laws and regulations and municipal ordinances, if applicable.

(d) Lessee will give Lessor at least ten (10) days prior notice in writing before conducting drilling operations on the Land.

(e) The term "production" means production in paying quantities. No obligation of Lessee to pay money under this Lease will be excused or delayed by reason of Force Majeure.

(f) The execution or ratification by Lessor of any division order, gas contract, or any other document will not alter any provision of this Lease unless the intent to do so is expressly stated in the document.

(g) Once commenced, the geophysical operations must be completed within a reasonable time. At the conclusion of the geophysical operations Lessee must restore any surface disturbances and remove any debris. Lessee must strictly comply with all federal, state, and county regulations in conducting the geophysical operations.

(h) Paragraph headings are used in this Lease for convenience only and are not to be considered in the interpretation or construction of this Lease.

(i) Lessee may at any time, by executing and delivering to Lessor and placing of record a release or release covering any portion of the Land, be relieved of all obligations of this Lease as to the portion of the Land so surrendered.



(j) Lessor and Lessee agree that a memorandum of this Lease shall be recorded in the Official Public Records of Tarrant County, Texas, to inform the public of the existence of this Lease, and the memorandum shall be limited to information concerning the parties hereto, the Land, and the term and notice provisions of the Lease. Any such memorandum shall not in any way modify any of the terms, conditions and provisions of this Lease.

(k) This Lease is binding upon and for the benefit of Lessor, Lessee, and their respective heirs, personal representatives, successors, and assigns.

(l) Notwithstanding anything contained herein to the contrary, it is expressly agreed and understood that, in the event that Lessee elects to pool or unitize and unitizes any of the leased premises, then all the leased premises will be included in such pool or unit.

Executed on the date first above written.

LESSOR:

**Attebury Grain, LLC a Texas limited liability company**

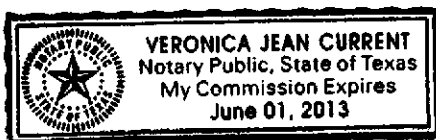
Ed Laur - Vice President

By: Ed Laur, as Vice President

THE STATE OF TEXAS

COUNTY OF Randall

This instrument was acknowledged before me on the 16<sup>TH</sup> day of March, 2010, by Ed Laur, as Vice President of Attebury Grain, a Texas limited liability company, on behalf of said corporation.



Veronica Jean Current

Notary Public, State of Texas

## **EXHIBIT "A"**

Attached as part of Oil and Gas Lease dated February 22, 2010, between Attebury Grain, LLC, a Texas limited liability company, as Lessor, and XTO Energy Inc., as Lessee.

10.044 acres of land, more or less, of a called 8.128 acres, situated in the J. N. Ellis Survey, A-463, Tarrant County, Texas, being Lot 1, Block 1, Producer's Grain Corporation Addition, according to the plat thereof recorded in Volume 388-109, Page 119, Plat Records, Tarrant County, Texas, and being more particularly described in that certain Special Warranty Deed dated November 10, 1999, from Contigroup Companies, Inc., a Delaware corporation, the successor in interest to Continental Grain Company, to Attebury Grain, Inc., a Texas corporation, as recorded in Volume 14115, Page 2, Official Public Records, Tarrant County, Texas.

Return to: Bryson G. Kuba  
6127 Green Jacket Dr.  
Apt. # 1136  
Fort Worth, TX 76137